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Letter dated 9 September 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 5 June 2002 (S/2002/631).

The Counter-Terrorism Committee has received the attached supplementary report from Luxembourg submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Letter dated 21 August 2002 from the Permanent Representative of Luxembourg to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I refer to your letter of 28 May 2002 by which you transmitted a series of questions from the Counter-Terrorism Committee to the authorities in my country in order to complete the report submitted by the Government of Luxembourg pursuant to paragraph 6 of Security Council resolution 1373 (2001).

In reply to that letter, I am hereby transmitting the supplementary report of the Grand Duchy of Luxembourg dated 20 August 2002, submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Hubert **Wurth**
Ambassador

Enclosure

Grand Duchy of Luxembourg: supplementary report dated 20 August 2002 submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Subparagraph 1 (a)

Does Luxembourg have any provision for regulating informal banking networks? Please outline such provisions.

Luxembourg does not have any special legislation on informal banking networks. However, the Luxembourg authorities consider that such networks fall within the scope of its banking laws and are consequently subject to all the obligations and verifications provided for in the legislation for this sector. For further information, see the explanations provided in the third paragraph of subparagraph 1 (a) and in subparagraph 1 (c).

Have there been convictions of natural or legal persons for non-cooperation with the authorities in the course of prosecution for alleged acts of money-laundering? What are the penalties incurred and the sentences, if any, that have been handed down?

To date, no natural or legal person has been convicted for not cooperating with the authorities in the framework of prosecution for alleged acts of money-laundering.

As the positive law of Luxembourg now stands, failure to cooperate and refusal to cooperate are liable to a fine of €1,250 to €125,000. However, in accordance with future articles 135-1 to 135-8 and 506-1 of the Penal Code, as they appear in the draft law of 29 April 2002 on the suppression of terrorism and its financing and on the approval of the International Convention for the Suppression of the Financing of Terrorism which was opened for signature in New York on 10 January 2000, such an act will also be punishable by imprisonment in accordance with the distinctions laid down in those articles.

Are natural or legal persons other than banks (e.g. attorneys, notaries) required to report suspicious transactions that might be linked to terrorist activities to the public authorities? If so, what penalties apply to persons who omit to report either wilfully or by negligence?

By virtue of the law of 11 August 1998 which incorporates criminal organizations and the offence of money-laundering into the Penal Code, all professionals in the financial sector, such as credit institutions, capital asset managers, advisers on financial transactions, brokers, professional securities depositories, notaries, company auditors, chartered accountants, insurance companies and gambling casinos are under an obligation to denounce suspect operations.

As the positive law of Luxembourg now stands, failure to cooperate and refusal to cooperate are liable to a fine of €1,250 to €125,000. However, in accordance with future articles 135-1 to 135-8 and 506-1 of the Penal Code, as they appear in the draft law of 29 April 2002 on the suppression of terrorism and its financing and on the approval of the International Convention for the Suppression of the Financing of Terrorism which was opened for signature in New York on 10 January 2000, such an act will also be punishable by imprisonment in accordance with the distinctions laid down in those articles.

Subparagraph 1 (b)

The CTC notes that Luxembourg is completing the constitutional procedure to become a party to the International Convention for the Suppression of the Financing of Terrorism and is therefore preparing amendments to its legislation. Please provide a progress report on the proposed law aimed at constituting the financing of terrorism as an autonomous offence.

By the Grand Ducal decree of 29 April 2002, the Minister of Justice was authorized to submit to the Chamber of Deputies of Luxembourg the draft law on the suppression of terrorism and its financing and on the approval of the International Convention for the Suppression of the Financing of Terrorism which was opened for signature in New York on 10 January 2000.

The draft law has been submitted to the Council of State for its opinion, which will probably be issued in November 2002, after which the draft law will be examined by the competent committee of the Chamber of Deputies.

Subparagraph 1 (c)

In addition to the directly applicable EC regulation on the freezing of funds, does Luxembourg have an autonomous legal power to freeze funds belonging to individuals connected with terrorist acts?

First of all, in accordance with the rules of criminal procedure under ordinary law, it is possible to conduct searches and to seize objects and articles that have been used or that are to be used to commit crimes. Such searches and seizures may be made either on the basis of a request for mutual assistance in judicial matters from another State or when a procedure has been initiated within Luxembourg at the request of the Prosecution Service.

In addition to the directly applicable European Community texts, Luxembourg has legal instruments which allow for funds to be blocked within the limits established by European legislation. These include the Grand Ducal decree of 10 November 1944 on foreign exchange control and the law of 21 December 2001 authorizing the Grand Duke to regulate certain matters. This enabling law is renewed every year.

Luxembourg's legislation on freezing funds and assets is also to be reviewed as soon as the relevant draft framework-decision is adopted by the European Union.

Moreover, the existing legal mechanism against money-laundering, which applies to all professionals in the financial sector, contains rules similar to those applicable to the freezing of assets proper.

Under these provisions and article 40 of the law of 5 April 1993 concerning the financial sector, credit institutions and other professionals in the financial sector are required to respond to and cooperate with, as fully as possible, any legally valid request transmitted to them by the law enforcement authorities in the performance of their duties.

These same persons are also required to abstain from executing any transaction that they know or suspect to be linked to money-laundering before informing the Public Prosecutor, who may order that the operation in question be stopped. If it is suspected that the transaction involves money-laundering and if stopping it is not possible or is likely to hinder the prosecution of the beneficiaries of a suspected

money-laundering operation, the institutions and other professionals concerned may carry out the transaction in question but must inform the Public Prosecutor about it immediately afterwards.

Furthermore, credit institutions and other professionals in the financial sector, as well as their managers and employees, may not reveal to the customer concerned or third persons that information has been transmitted to the authorities or that a money-laundering investigation is in progress.

As the positive law of Luxembourg now stands, the offence of money-laundering, as far as combating terrorism is concerned, covers the basic offences of criminal conspiracy, corruption and arms trafficking.

However, the draft law of 29 April 2002 on the suppression of terrorism and its financing and on the approval of the International Convention for the Suppression of the Financing of Terrorism aims to specifically extend professional obligations regarding money-laundering to all terrorist offences proper, which will be defined in the law.

Subparagraph 1 (d)

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

Under the amended law of 21 April 1928 on non-profit associations and foundations, the establishment of a foundation must be approved by means of a Grand Ducal decree. For that purpose, the foundation's statutes are checked to ensure that they comply with the requirements of the above law of 21 April 1928.

Moreover, inter vivos gifts and bequests of more than €12,500 to a foundation must be approved and foundations are required to submit their annual accounts and their budget to the Minister of Justice each year, within two months of the end of the financial year.

Financial transactions of associations and foundations can be carried out only by banking institutions legally established in the Grand Duchy of Luxembourg and are therefore subject to the same rules as all other financial transactions carried out by these institutions. Consequently, they must comply inter alia with the principles of "Know Your Customer" and must report suspicious operations that might be linked to money-laundering.

On the basis of article 18 of the above-mentioned law of 21 April 1928, the Prosecution Service may also request that an association be dissolved, particularly when it uses its assets for activities other than those for which it was established or that are contrary to law or public order.

Subparagraph 2 (a)

Do those who buy or sell weapons in Luxembourg require a licence to do so legally? Are there legal provisions prohibiting the trafficking and brokering of weapons to terrorists and their organizations?

In the Grand Duchy of Luxembourg, pursuant to the law of 15 March 1983 on weapons and ammunition, anyone wishing to acquire, import, transport, own, carry, sell or transfer firearms must have a permit issued by the Ministry of Justice.

Weapons dealers legally established in Luxembourg may therefore sell or deliver firearms only to those private individuals who hold such permits. Moreover, a special licence issued by the competent authorities of Luxembourg is needed in order to import and export weapons and ammunition.

Given that the weapons trade is thus subject to the issuance of permits, which are issued only after the applicant's background has been checked, and that such trade with individuals or companies not in possession of the permits required by law is prohibited and is subject to a penalty, the current positive law of Luxembourg does not contain any specific provision forbidding the trade of weapons with terrorist organizations.

Subparagraph 2 (e)

What is the competence of the courts of Luxembourg to deal with criminal acts of each of the following kinds:

- *An act committed outside Luxembourg by a person who is a citizen of, or habitually resident in, Luxembourg (whether that person is currently present in Luxembourg or not);*
- *An act committed outside Luxembourg by a foreign national who is currently in Luxembourg?*

Under article 5 of the Code of Criminal Procedure, any citizen of Luxembourg who commits outside the territory of Luxembourg a crime that is punishable under the law of Luxembourg may be prosecuted and tried in the Grand Duchy of Luxembourg.

Pursuant to article 7 of the same Code, any foreigner who, as far as combating terrorism is concerned, commits, outside the territory of Luxembourg, a crime against the security of the State or public safety, or who falsifies certain official documents, commits murder, inflicts wilful bodily injuries or who interferes with the individual freedom of a citizen of Luxembourg or of an allied country may be prosecuted and sentenced under the laws of Luxembourg if he/she is found in the Grand Duchy of Luxembourg, or is found abroad and the Government of Luxembourg obtains his/her extradition.

Lastly, the draft law of 29 April 2002 on the suppression of terrorism and its financing and on the approval of the International Convention for the Suppression of the Financing of Terrorism aims to introduce into the Code of Criminal Procedure a provision whereby anyone who commits abroad any of the terrorist offences, which are to be included in the Penal Code by the same draft law, may be prosecuted and sentenced in the Grand Duchy of Luxembourg, if an extradition request is filed and the person concerned is not extradited.

Subparagraph 2 (f)

What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings (especially those relating to the financing or support of terrorist acts) must be met, and how long does it actually take in practice to implement such a request in Luxembourg?

The legislation of Luxembourg does not contain any special provision stipulating a deadline within which requests for mutual legal assistance must be met.

However, under article 7 of the law of 8 August 2000, mutual legal assistance cases are treated on an urgent and priority basis and the authority receiving the request informs the requesting authority of the status of the procedure and of any delay. The time frame within which such requests are fulfilled varies greatly and depends on the scope and complexity of the steps to be taken in order to fulfil a given request.

Subparagraph 3 (c)

With which countries has Luxembourg entered into bilateral treaties on extradition and mutual legal assistance?

In addition to the multilateral legal instruments on extradition and mutual legal assistance signed by the Grand Duchy of Luxembourg within the framework of international organizations, the country has concluded the following bilateral agreements:

1. With the United States of America, an extradition treaty on 1 October 1996 and a treaty on mutual legal assistance in criminal matters on 13 March 1997; and

2. With Australia, an extradition treaty on 23 April 1987 and a treaty on mutual legal assistance in criminal matters on 24 October 1988.

Subparagraph 3 (d)

The CTC would welcome a progress report, in relation to the international conventions and protocol relating to terrorism, on the steps taken in connection with:

– *Becoming a party to the instruments to which Luxembourg is not yet a party; and*

– *Enacting legislation and making other necessary arrangements to implement those to which it is a party.*

Luxembourg intends to accede to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 14 December 1973).

The procedure for the adoption of three other international instruments has begun. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 24 February 1988) was signed by Luxembourg on 18 May 1989, the opinion of the Council of State on this matter was received on 8 November 2001 and the relevant draft law was submitted to the Chamber of Deputies on 30 November 2001.

The International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997), which Luxembourg signed on 6 February 1998, has been submitted to the Council of State for its opinion.

Lastly, the Protocol against the Smuggling of Migrants by Land, Sea or Air, Supplementing the United Nations Convention against Transnational Organized Crime (New York, 15 November 2000), was signed by Luxembourg on 14 December 2000 and the draft law for its incorporation into national law is being drawn up.

Furthermore, the Luxembourg authorities are examining the possibility of signing the following three conventions:

- Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988); and
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (Rome, 10 March 1988).

To conclude, it must be pointed out that the law concerning inter alia the approval of the International Convention for the Suppression of the Financing of Terrorism (New York, 10 January 2000) was submitted to the Chamber of Deputies on 29 April 2002 (see subparagraph 1 (b) above).

Subparagraph 3 (e)

Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which Luxembourg is a party?

Under article 3, paragraph 1, of the law of 20 June 2001 on extradition, any act that is punishable under the law of Luxembourg and the law of the requesting State by imprisonment for at least one year or by a heavier sentence is, in general, extraditable.

This general rule does not prejudice the validity of any particular provisions of an international legal instrument stipulating a sentence of less than a year, such as article 2 of the Convention on Extradition and Mutual Legal Assistance concluded by the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, which provides for a six-month sentence.

Since all offences in the fight against terrorism are punishable by heavier sentences, violations listed in conventions and protocols designed to counter terrorism are extraditable.